

**Letter of Findings: 01-20210002  
Individual Income Tax  
For the Year 2019**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Having failed to provide the supplementary information requested of them, Out-of-State Individuals failed to meet their burden of establishing that the Department's decision requiring Individuals to addback on their return, an amount equal to what Individuals categorized as "capital gain on the sale of stock."

**ISSUE**

**I. Individual Income Tax - Disallowance of Deduction and Assessment of Additional Tax.**

**Authority:** IC § 6-3-1-3.5; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. §§ 1361 -62; Black's Law Dictionary (9th ed. 2009).

Taxpayers argue that the Department erred in disallowing a Schedule C deduction on their 2019 Indiana return, assessing additional income tax, and denying Taxpayers an income tax refund.

**STATEMENT OF FACTS**

Taxpayers are residents of a state outside Indiana. Taxpayers file and pay Indiana income tax. Taxpayers filed a 2019 IT-40 PNR (Indiana Part-Year or Full-Year Nonresident) tax return. On that return, Taxpayers originally calculated that they would receive a tax refund of approximately \$2,000.

The Indiana Department of Revenue ("Department") reviewed the return and made certain adjustments. The Department disallowed a Schedule C deduction of approximately \$70,000. The \$70,000 was reported from the Taxpayers' K-1 concerning Taxpayers' share of an Indiana company's income. According to Taxpayers, the income represented "capital gain on the sale of stock."

The disallowance resulted in the denial of a refund of approximately \$2,000 and an assessment of approximately \$800.

Taxpayers disagreed with both the refund denial and the assessment of additional tax. Taxpayers submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for their protest. This Letter of Findings results.

**I. Individual Income Tax - Disallowance of Deduction and Assessment of Additional Tax.**

**DISCUSSION**

The issue is whether Taxpayers have met their statutory burden of establishing that they were entitled to deduct capital gains income reflected on their company's K-1.

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing adjusted gross income tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of*

*State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In challenging an assessment, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, when an agency is charged with enforcing a statute, the courts defer to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

An S Corporation - such as Taxpayers' company - is "[a] corporation whose income is taxed through its shareholders rather than through the corporation itself." Black's Law Dictionary 432 (11th ed. 2019); see also; I.R.C. §§ 1361 -62. Pursuant to IC § 6-3-1-3.5, the Indiana income tax rules piggyback on the federal income tax statutes and regulations. Therefore, the federal rules and case law are generally applicable to determine an individual shareholder's tax liability. Furthermore, any additional income received by the S-Corp as a profit passes through to the individual shareholders as income. In this case, Taxpayers' K-1 reflected the \$70,000 in capital gains which, in Taxpayers' case, was originally deducted from their share of the company's income.

On their Indiana return, Taxpayers reversed the amount on the ground that the capital "gain is taxable in the shareholder's home state which is in the case of [Taxpayers] is California and not Indiana."

For income tax purposes, Indiana defines "adjusted gross income" in relevant part as follows:

In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Except as provided in subsection (c), add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States. IC § 6-3-1-3.5(a).

In seeking to determine that nature of the "capital gain from the sale of stock," Taxpayers were asked to provide additional information. Among the information sought were replies to two specific questions as follows:

- Was any portion of the capital gains included in the sales numerator/denominator for [S Corp]?
- If not, what was the sales price for the stock sold?

Some 120 days after the questions were first posed, Taxpayers have failed to respond.

Given the failure to respond to the questions and supply the information required, the Department finds itself unable to find that Taxpayers have met their burden of establishing that the proposed assessment was wrong as required under IC § 6-8.1-5-1(c).

## FINDING

Taxpayers' protest is respectfully denied.

July 20, 2021

Posted: 09/29/2021 by Legislative Services Agency  
An [html](#) version of this document.